

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-56145A; File No. SR-NASD-2007-023]

**Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.); Order Approving Proposed Rule Change To Amend the By-Laws of NASD To Implement Governance and Related Changes To Accommodate the Consolidation of the Member Firm Regulatory Functions of NASD and NYSE Regulation, Inc.**

May 30, 2008.

**Amended**

In Part V of Securities Exchange Act Release No. 56145 ("Release No. 34-56145"), issued July 26, 2007,<sup>1</sup> the Securities and Exchange Commission ("Commission") is adding, immediately after the following sentence:

Accordingly, after reviewing the record in this matter, the Commission believes that NASD has provided sufficient basis on which the Commission can find that, under the Exchange Act, NASD complied with its Certificate of Incorporation and By-Laws with respect to the proxy approval process and that the proposed amendments to its By-Laws were properly approved by NASD members.

the following paragraph:

This finding as to NASD compliance and members' approval is not a definitive adjudication under state law, such as a trial court would make after an evidentiary hearing, regarding the claim that the proxy statement was misleading. Except to the extent that state law informs the Commission's finding that, as a federal matter under the Exchange Act, NASD complied with its Certificate of Incorporation and By-Laws with respect to the proxy approval process and that the proposed amendments to its By-Laws were properly approved by NASD members, the Commission is not purporting to decide a question of state law. The Commission does not intend that its determination regarding the NASD's uncontradicted prima facie showing before the Commission that the proxy statement was not misleading be binding on a court in a claim based on state law.

In adding this clarifying language, the Commission is not vacating, nullifying or rendering void Release No. 34-56145, which approved NASD's proposed rule change to amend the By-Laws of NASD to implement governance and related changes to accommodate the consolidation of the member firm

regulatory functions of NASD and NYSE Regulation, Inc. Release No. 34-56145, as amended herein, remains in effect as of July 26, 2007, the date it was issued by the Commission.

By the Commission.  
 Florence E. Harmon,  
*Acting Secretary.*  
 [FR Doc. E8-12631 Filed 6-5-08; 8:45 am]  
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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-57906; File No. SR-NYSEArca-2008-40]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of Shares of the NETS Tokyo Stock Exchange REIT Index Fund**

June 2, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 22, 2008, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to list and trade shares ("Shares") of the NETS<sup>TM</sup> Tokyo Stock Exchange REIT Index Fund ("Fund") issued by the NETS Trust ("Trust"). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 5.2(j)(3), the Exchange's listing standards for Investment Company Units ("ICUs").<sup>3</sup>

The Fund seeks to provide investment results that correspond generally to the price and yield performance, before fees and expenses, of publicly-traded securities in the aggregate in the Japanese market, as represented by the Tokyo Stock Exchange REIT Index ("Underlying Index" or "Index"). The Underlying Index is a market capitalization weighted index consisting of stocks of all of the real estate investment trusts traded primarily on the Tokyo Stock Exchange.

The Exchange is submitting this proposed rule change because the Underlying Index does not meet all of the "generic" listing requirements of Commentary .01(a)(B) to NYSE Arca Equities Rule 5.2(j)(3) applicable to listing of ICUs based on international or global indexes. The Underlying Index meets all such requirements except for those set forth in Commentary .01(a)(B)(2).<sup>4</sup> The Exchange represents that: (1) Except for Commentary .01(a)(B)(2) to NYSE Arca Equities Rule 5.2(j)(3), the Shares currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3); (2) the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to ICUs shall apply to the Shares; and (3) the Trust is required to comply with Rule 10A-3<sup>5</sup> under the Act for the initial and continued listing of the Shares. In addition, the Exchange represents that

<sup>3</sup> An Investment Company Unit is a security that represents an interest in a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities (or holds securities in another registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities). See NYSE Arca Equities Rule 5.2(j)(3)(A).

<sup>4</sup> Commentary .01(a)(B)(2) to NYSE Arca Equities Rule 5.2(j)(3) provides that component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares.

<sup>5</sup> 17 CFR 240.10A-3.

<sup>1</sup> See Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007) (FR Doc. E7-14855).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.